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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-542

AMERICAN EXPORT ISBRANTSEN LINES, INC.,

Petitioner,

MARGARET ANN WILKINS, as Administratrix of the ESTATE OF WILLIAM LANE WILKINS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

The Petitioner, American Export Isbrandtsen Lines, Inc. respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered in this proceeding on June 21, 1971, which judgment reversed, in part, the verdict of judgment of the District Court for the Southern District of New York. (The Circuit Court,

on July 19, 1971, denied motions made by both plaintiff and defendant respectively, for rehearing). The District Court, after a jury verdict for defendant, had entered judgment for the defendant, and dismissed plaintiff-administratrix' claim for the wrongful death of her deceased seaman husband.

Questions Presented for Review

1. Are juries in the Federal Court to be allowed to decide questions of technical and involved medical causation, absent the assistance of expert medical opinion evidence, which questions are clearly beyond an ordinary layman's knowledge, on the assumption that being a Federal juror, ipso facto, qualifies one in such medical expertise.

2. Whether the existence of opposing Circuit Court decisions which interpret the case of *Sentilles* v. *Inter-Caribbean Shipping Corp.*, 361 U.S. 107, in contradictory manner, does not so destroy the desired uniformity of the maritime law.

The Opinions of the Court Below

The opinions of the Court of Appeals for the Second Circuit are printed in the Appendix hereto. The Court of Appeals' opinion is not yet reported. No opinion was rendered in the District Court, trial having been to a jury.

Jurisdiction

The Decree of the Court of Appeals for the Second Circuit was entered on June 21, 1971. Both plaintiff and defendant moved for rehearing and rehearing en banc, which motions were denied on July 19, 1971.

The action was brought by libel and complaint filed by the administratrix of the deceased seaman and is within the Admiralty and Maritime jurisdiction of the United States.

The jurisdiction of this Court to review by way of Writ of Certiorari, the decree complained of is conferred by 28 U.S.C. Sections 1254 (1) and 2101 (c).

Statutes Involved

The questions presented for review by petitioner herein is based upon the General Maritime Law, as enunciated by the Federal Courts and does not rest upon any Statute.

Statement of the Case

Plaintiff Administratrix of the estate of her deceased seaman husband brought this jury action to recover damages for the death of her husband, which resulted from a heart attack suffered while in defendant's employ.

Lane Wilkins served as Chief Officer aboard the S/S EXTAVIA from August, 1964, until his death on October 6, 1964. His death, as recited in the death certificate, was caused by:

> ". . . thrombus of anterior descending branch of left coronary artery with evidence of a chronic mycarditis and a sclerosis suggestive of a previous focal infarction. Death appears to be due to acute myocardial failure."

The death certificate was in evidence. Additionally, a chart showing the hours "worked" by Lane Wilkins, was received into evidence.

The chart was as follows:

September	19—	17 hours
September	20—	20 hours
September	21—	9 hours
September	22—	19 hours
September	23—	12 hours
September	24—	15 hours
September	25—	15 hours
September	26—	11 hours
September	27—	11 hours
September	28—	11 hours
September	29—	11 hours
September	30—	11 hours
October	1—	11 hours
October	2—	11 hours
October	3—	10 hours
October	4—	7½ hours
October	5—	12 hours
October	6—	19 hours

No evidence was introduced or offered, explaining the nature of the "work" represented by the hours. On the contrary, testimony, general in nature, explained that a substantial part of the "work" was stand-by time, clerical, non-physical or even sleeping, if on call.

Each side called a medical expert. The doctors were in agreement that any work done prior to October 3rd could have no causal relationship to the death.*

The trial judge refused to allow the jury to consider evidence of physical activity prior to October 3rd. In substance, the trial court ruled that the jury was not to determine whether the

> "thrombus of anterior descending branch of left coronary artery . . . with . . . chronic mycarditis and sclerosis suggestive of a previous focal infarction . . ."

was due to 184 hours of "work" of unknown character, spread over 14 days.

The Circuit Court assumed that this ruling was based upon Dr. Jacobi's negative answer. The Circuit Court reversed the decision, saying that the jury should be allowed to "substitute its own practical judgment for that of the expert". In short, the Circuit Court found it error not to have allowed the lay jury to judge whether the "thrombus . . ." and "chronic mycarditis . . ." and "sclerosis and focal infarction" etc. was a proximate result of unspecified "work".

As support for the amazing scope for complicated medical diagnosis given this jury (and therefore, all juries

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* Dr. Clark, defendant's expert attributed death to a spontaneous thrombus arising from Wilkins' chronic, longstanding and advance arteriosclerotic heart disease and therefore found no causal connection to any of Wilkins' activities aboard ship.

Dr. Jacobi, plaintiff's expert, twice gave ambiguous answers to what relation the work history had to death (generally affirming that physical activity could have a relation). However, he specifically and directly stated that activities prior to October 3rd would *not* have any causal relation to death.

in, at least, the Second Circuit), the appellate court cited *Sentilles* v. *Inter-Caribbean Shipping Corp.*, 361 U.S. 107 (1959).

It is respectfully submitted that the reliance was misplaced and that logic and judicial precedent demand a different result.

Reasons for the Allowance of the Writ

The holding of the Second Circuit misreads *Sentilles* and is in clear conflict with the 5th Circuit decision of *Webster* v. *Offshore Food Service, Inc.*, 434 F. (2d) 1191 (1970).

Sentilles v. *Inter-Caribbean Shipping* is factually distinguishable and legally, its holding is much more modest and restricted than interpreted by the Second Circuit.

There was evidence that prior to his accident, Sentilles revealed under x-ray study "a pulmonary lesion" which was "tubercular" but "dormant."

His accident involved acute trauma as he "was pitched in the air" and "washed . . . a considerable distance". Shortly later, he became "quite ill" with a "serious case of tuberculosis". Medical expert opinion was fairly unanimous in allowing that "acute dissemination of tuberculosis *might* be a consequence of the accident."

Apparently, no doctor would state unequivocally that the trauma caused the aggravated tuberculosis.

The jury found for plaintiff; the Fifth Circuit reversed and this court granted certiorari, overruled the circuit court and re-instated the jury verdict.

This Court did not grant juries the power (much less the ability) to make medical diagnoses. Rather, a jury

given a physical condition defined medically as tuberculosis, an accompanying external potential stimulus (a trauma) and expert opinion that the trauma could, in medical theory, be a cause of the tuberculosis, were fully competent, and able to determine whether the weight of the evidence preponderate on the side of causality, or not.

All the necessary elements, i.e. the nature of the illness, the potential cause and the medical possibilities were established by competent proof. Medical theory was established by expert medical opinion. Within this area, of duly established possibility, the jury was to determine what was proved.

Legal determinations of causality remained with the jury even in areas of medicine, so long as the medical theory and fact was properly established.

Sentilles did not do away with the prohibition against jury speculation as opposed to deliberation nor did it not lessen the requirement that Jones Act plaintiffs must produce more than a "mere scintilla of proof."

The involved and technical nature of the medical question involved herein, is clear. It hardly seems an advancement in judicial theory or sound evidentiary procedure to allow a jury to decide such question not only absent but contrary to medical proof. That such a rule was never enunciated by this Court is made clear by the language in *Webster* v. *Offshore Food Service,* 434 F. (2d) 1191, 1193-4, (5 Cir., 1970):

> "(5, 6) As to the second rationale, the trier of fact would not be at liberty to disregard arbitrarily the unequivocal uncontradicted and unimpeached testimony of an expert witness, *Security First Nat'l Bank of Los Angeles* v. *Prudential Ins. Co. of America,* 186 F.(2d) 662, 665, (10th Cir. 1951). In-

deed such opinion testimony may form the basis for a directed verdict. *Bearman,* supra. We think it no less true that such testimony may support a motion for summary judgment, and we hold that the testimony offered in support of this motion was adequate.

"*Sentilles* v. *Inter-Caribbean Shipping Corp.,* 361 U.S. 107, 80 S. Ct. 173, 4 L. Ed. 2d 142 (1959), upon which appellant heavily relies, is not to the contrary. There it was claimed that a shipboard injury had aggravated plaintiff's previously dormant tubercular condition. Three experts testified with varying degrees of confidence to the possibility that the injury had, in fact, aggravated the condition, but at minimum each testified that there existed some possibility that the injury had been the cause. A jury verdict for the plaintiff was reversed by the Court of Appeals. The Supreme Court ordered the verdict reinstated, holding that the jury's power to infer that the injury aggravated the condition was not impaired by the failure of any medical witness to testify with certainty that the injury had caused the aggravation, or by the lack of medical unanimity on the degree of likelihood that it had done so. *Sentilles* does not reach the question whether the trier of fact may find that a particular phenomenon was the source of plaintiff's disease in the face of unequivocal and uncontradicted testimony to the contrary, given by an expert witness whose qualifications have not been impeached. The only expert testimony in this record, unlike that in *Sentilles* is that it was not possible for the phenomenon which appellant claims gave rise to his tuberculosis to have done so, since the claimed causal phenomenon could not have existed. *Sentilles* does not, therefore, preclude primary judgment in this case."

CONCLUSION

For the above reasons, a writ of certiorari should be issued to review the judgment and opinion of the Second Circuit.

Respectfully submitted,

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[APPENDICES FOLLOW]

APPENDIX A

Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 764—September Term, 1970.

(Argued April 29, 1971 Decided June 21, 1971.)

Docket No. 35391

MARGARET ANN WILKENS, as Administratrix of the ESTATE OF WILLIAM LANE WILKENS,

Plaintiff-Appellant,

v.

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant-Appellee.

Before:

HAYS and FEINBERG, *Circuit Judges,* and BLUMENFELD, *District Judge.**

Appeal from a judgment of the United States District Court for the Southern District of New York, Levet,

* Of the District of Connecticut, sitting by designation.

Judge, entered upon a jury verdict for the defendant in a Jones Act suit against a shipowner.

Reversed for a new trial.

HERBERT LEBOVICI, New York, N. Y. (Kenneth Heller, New York, N. Y., on the brief), *for Plaintiff-Appellant.*

THOMAS H. HEALEY, New York, N. Y. (Foley, Grainger & Darby, New York, N. Y., Walter A. Darby, Jr., Daniel L. Stonebridge, of counsel), *for Defendant-Appellee.*

BLUMENFELD, *District Judge*:

Plaintiff brought this action as administratrix of the Estate of William Lane Wilkins, an officer in the merchant marine, against his employer, the owner of the ship on which he was serving, to recover damages for his death, which resulted from a heart attack suffered at sea. We are constrained to remand for a new trial because of error in the exclusion of evidence relevant to the issue of proximate cause.

Wilkins was employed by the defendant as Chief Officer on board the S.S. Extavia from August 1964, when he signed articles for her forthcoming voyage, until October 6, 1964, the date of his death. On September 18, 1964, while traversing a leg of the homebound passage between Leghorn, Italy, and Barcelona, Spain, the S.S. Extavia, then in command of the second officer, suffered a collision with another vessel. Following the collision, Wilkins was required by the defendant to put in overtime hours in the performance of his duties (which were soon augmented by those of the second mate, who was relieved of all navigational duties on September 20, at 0400 hours).[1] The core

of the plaintiff's contention was that the overtime work, required of Wilkins by the defendant in violation of 46 U.S.C. §§235 and 673, was the proximate cause of the decedent's heart attack and ensuing death.

Whether measured by the provisions of one or the other of these statutes,[1] the evidence at trial was that following the collision, with the lone exception of Sunday, October 4,[2] Wilkins had worked overtime on every day consecutively from September 19, 1964, through October 6, 1964, when he worked 19 hours. After he went off duty during the

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[1] The trial court correctly held that insofar as overtime work aboard ship was concerned §235 was superseded by §673. Section 235 is applicable only to officers, whereas §673 applies to seamen as well. Indeed, §673 forbids a shipowner from requiring or permitting work for more than 8 hours in one day, whereas §235 provides that an officer shall not "be required to do duty to exceed nine hours of any twenty four while in port, . . . or more than twelve hours of any twenty four at sea . . ." (overtime work in emergencies is excepted, *see* p. 3709, *infra*).

[2] The number of hours worked by Wilkins each day:

September 19—17 hours	September 28—11 hours
September 20—20 hours	September 29—11 hours
September 21— 9 hours	September 30—11 hours
September 22—19 hours	October 1 —11 hours
September 23—12 hours	October 2 —11 hours
September 24—15 hours	October 3 —10 hours
September 25—15 hours	October 4 —7½ hours
September 26—11 hours	October 5 —12 hours
September 27—11 hours	October 6 —19 hours

night of October 6, Wilkins showered hand changed his clothes. He then made a brief visit to the bridge and returned to his cabin. Shortly thereafter he suffered an acute heart attack manifested by extreme pain in his chest. A hurriedly summoned Coast Guard cutter rushed him to a hospital ashore, but he was reported to have died within minutes after his arrival there.

I.

During the early part of the trial, the court admitted into evidence as an exhibit a chart showing the hours concededly worked by Wilkins each day, broken down into watches within each 24-hour period. The first assigned error we consider is a ruling made with respect to this exhibit at a later stage of the trial. While evidence was still being taken, the trial court withdrew the exhibit and substituted in its place a truncated chart disclosing only the hours the decedent had worked aboard the ship on October 3, 4, 5 and 6.

To put this singular ruling into perspective, we set forth a brief resume of a portion of the medical testimony which apparently induced it. Two experts, one for each side, testified on the issue of causal connection between Wilkins' overtime work and his death. What little conflict there was in the testimony of the medical experts as to the final cause of death was attributable to the differences in their medical interpretations of the stated cause of death on the death certificate and the pathological reports and slide sections resulting from an autopsy. They did not differ as to the final cause of death. They agreed he died as a result of an acute coronary insufficiency

which induced ventricular fibrillation,[3] finally resulting in death.

In the opinion of Dr. Jacobi, who testified for the plaintiff, the "coronary insufficiency" was caused by a heart muscle spasm. Each successive link in the chain of causation following the muscle spasm to ultimate death was supported by evidence obtained at the autopsy. But there was no anatomical evidence of what caused the heart muscle spasm. Plaintiff's counsel asked Dr. Jacobi whether there was a causal connection between the "overtime" and the heart muscle spasm. To what the judge described as a "bit-by-bit" hypothetical question, embracing the hours worked and the duties performed by Wilkins from the time of the collision at sea until Wilkins' heart attack, Dr. Jacobi answered:

> "I would say that both the physical activity over those areas that you have described on the sixth[4] and the tensional changes changes incident to the supervision are, perfectly adequate to explain the acute coronary insufficiency *by way of the spasm* of the coronary artery which eventuated in the changes that were found at autopsy." (Emphasis added.)

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[3] This was an explanation of what happens when insufficient blood flows through the arteries to the heart (coronary insufficiency). The heart keeps contracting, but with insufficient blood it does not contract as a unit. Instead, each little fibre in the heart contracts on its own, causing the heart to flutter at an extremely high rate, a condition incompatible with life.

[4] The nature and extent of the kind of work he had been doing as exemplified by that particular day was fully described at trial by a pilot who had been taken aboard to navigate the ship through the St. Lawrence Seaway from Iroquois Lock to Toronto.

Appendix A

On redirect examination when asked whether the prior work history between September 18, 1964, and the vessel's arrival in Montreal (October 3) would have "any medical relationship to the susceptibility of the man to an acute coronary insufficiency after October 3, when the vessel left for Montreal," he answered that it would. After accepting the court's invitation to have the question read again, he answered "No."[5]

It is this response which was the apparent basis for the court's evidentiary ruling that the truncated chart be substituted for the chart covering the entire period from the collision to Wilkins' death.

It was error to withdraw from the jury the evidence of Wilkins' overtime work during the period from the collision to October 3. The jury was entitled to have this broader basis for an evaluation of the cause of the decedent's heart muscle spasm. It was not bound by the perimeter of expert testimony but rather was entitled to substitute its own practical judgment for that of the expert. The fact that the question put to the doctor is the kind which cannot be answered on the basis of empirical knowledge or with scientific accuracy, does not mean that a jury's answer to it would be irrational. They were not bound to stay on a scientific platform.[6]

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[5] The sense educible from these two conflicting answers is, at least, ambiguous. On recross examination almost immediately thereafter, when asked, "do you mean that this man would have lived a normal life expectancy if he did not come into another situation of tensions and long hours of work," he answered: "That's right."

[6] Actually, the plaintiff's doctor had testified that it was his professional opinion that a man with a job involving tension and occasional manual work is a candidate for a heart attack if the tension is sufficient and prolonged enough or the work prolonged enough under those (previously described) conditions.

Appendix A

The idea that proximate cause between an internal human physical condition and external stimuli cannot be established except by the testimony of a medical witness was expressly rejected by the Supreme Court in *Sentilles* v. *Inter-Caribbean Shipping Corp.*, 361 U.S. 107, 109 (1959):

> "The jury's power to draw the inference that the aggravation of petitioner's tubercular condition, evident so shortly after the accident, was in fact caused by that accident was not, impaired by the failure of any medical witness to testify that it was in fact the cause. . . . The members of the jury, not the medical witnesses, were sworn to make a legal determination of the question of causation."

Any possibility that the error might be regarded as harmless in light of the other evidence at the trial must be rejected. The force of the trial judge's action was enhanced by his specific instruction to the jury not to consider any evidence pertaining to the decedent's activities prior to October 3, 1964.[7]

II.

An adverse ruling by the trial court on the plaintiff's claim that she was entitled to the benefit of a presumption on the issue of proximate cause is also asserted as error.

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[7] The jury was charged:

> "In the determination of whether the defendant violated the statute in question, you are to consider only the evidence which pertains to the decedent's activities on the ship from October 3rd, 1964 onward. You are not to consider any evidence which pertains to the decedent's activities prior to October 3rd, 1964."

Appendix A

At the trial, the judge rejected the plaintiff's contention that the burden was on the defendant shipowner to prove that its statutory violation not only did not but could not have contributed to the decedent's death. This contention relates to the inescapable precondition to liability that there must be a causal connection between the tortious conduct of the defendant and the injury sustained by the plaintiff.[8] Since this issue is likely to arise on a retrial, we deem it advisable to consider it now. We think Judge Levet properly allocated the burden of proof on the issue of causation to the plaintiff.

A feature of our Anglo-American adversary system is that the task of adducing evidence rests on the parties in

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[8] The plaintiff's reliance on *Kernan* v. *American Dredging Co.*, 355 U.S. 426 (1958), to circumvent that precondition is misplaced. Although it was decided in that case that the scope of liability imposed on shipowners in Jones Act cases for injuries to seamen resulting from, or caused by, a violation of a statutory duty is not limited to those injuries against which the statute is designed to afford protection, the Court did not go so far as to hold that a causal connection was presumed to exist between the statutory violation and the alleged injury. In *Nolan* v. *Greene*, 383 F.2d 814, 817 (6th Cir. 1967), it was expressly held that *Kernan* does not relieve the plaintiff of the burden of proving causation:

> "Although the case does hold that recovery may be had under the Jones Act for the death of a seaman in the absence of negligence when there has been a breach of a statutory duty, there must be a causal connection between the breach of the statutory duty and the death of the seaman. In the instant case there is no proof that failure to provide fire extinguishers even remotely caused the death of plaintiff's husband."

See also, *Epling* v. *M. T. Epling Co.*, 435 F.2d 732, 735 (6th Cir. 1970).

the proceeding. Inherent in that system is the general rule that, as between two parties, he who desires to have judicial action taken in his behalf has the burden of producing the evidence which is a prerequisite to such action. See generally, IX J. Wigmore, Evidence 270-84, §§2485-2487 (3rd ed. 1940, supp. 1970). Of course, in some situations proof of one fact provides a basis for inferring another. However, there is a significant difference between using one fact as evidence of another, and using the proof of one fact to impose on the party against whom it directed the burden of proving the non-existence of another. In order to shift the burden of proof to that extent there must be a presumption that the other exists.

The operation of a presumption is often described, for this is a rule of law as to which the jury must be instructed. But the cases do not clearly define the ingredients out of which a presumption is created.[9] It is generally understood that in law for a specified fact to be presumptive evidence of another it must be one which in common experience leads naturally and logically to that other. *Tot* v. *United States,* 319 U.S. 463, 467 (1943). Cf. *McFarland* v. *American Sugar Refining Co.,* 241 U.S. 79, 86 (1916).

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[9] Professor McCormick says:

> "The reasons for the recognition of presumptions by the courts are various. First and foremost is the reason of probability. In certain recurring fact-situations it becomes accepted by the judges that the proof of fact A renders the inference of the existence of fact B so probable that it is sensible and time-saving to assume the truth of fact B until the adversary disproves it." C. McCormick, *Evidence* 641, §309 (1954).

Appendix A

It is clear, we think, that in holding in part I of this opinion that the evidence of Wilkins' earlier overtime work was not so devoid of probative value as to forbid an inference that it caused his heart attack, we were not saying that it is common experience that any amount of overtime work in violation of the statute causes bodily injury to a seaman. A justifiable inference is not a synonym for a presumption.

The statutes on which liability in this case was predicated contain no support for the kind of presumption the plaintiff seeks to have us apply. Whatever light is shed on this point indicates the contrary. The following portions are relevant. Section 673 of Title 46 U.S.C. provides:

> "No licensed officer or seaman . . . shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and/or life or property. . . . [N]or shall any licensed officer or seaman in the deck or engine department be required to work more than eight hours in one day; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seaman when in the judgment of the master or other officer the whole or any part of the crew are needed for maneuvering, shifting berth, mooring, or unmooring, the vessel or the performance of work necessary for the safety of the vessel, her passengers, crew, and cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea, from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, or other drills. . . ."

Appendix A

The statutory exceptions from the prohibition of overtime work thus specifically permit more strenuous exertion than usual under more difficult and tension-producing conditions than ordinarily faced. Thus, the statute is obviously at odds with a view that in common experienc any overtime work leads naturally and logically to bodily injury of the worker, and furnishes no basis for fashioning the kind of presumption the plaintiff urges upon us.

The rule for which the plaintiff contends has been excerpted from the rule of The Pennsylvania,[10] named after the case in which it was first enunciated by the Supreme Court, *The Pennsylvania,* 86 U.S. (19 Wall.) 125 (1873). The rule of The Pennsylvania, examined in its entirety, incorporates the reasons for its own adoption:

> ". . . But when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the statute. . . ." *Id.* at 136.

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[10] The Pennsylvania rule, which shifts the ultimate burden onto the defendant to disprove the presumed fact, has been assessed as ". . . a drastic and unusual presumption. . . ." G. Gilmore & C. Black, *The Law of Admiralty,* 404, §7-5 (1957). *But see* Revised Draft of Proposed Rules of Evidence for the United States Courts and Magistrates (prepared by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States) Rule 301 (March 1971).

Appendix A

The logical probability that fault of the ship is the cause of a collision is based on wide experience in maritime navigation and is authoritatively attested to by Professors Gilmore and Black, who report:

> "The collision case is rare in which there is not at least some arguable reason for regarding both vessels at fault. . . ." *The Law of Admiralty, supra* at 408 §7-6.

Moreover, The Pennsylvania rule might be regarded as fair because each ship involved in a collision has superior means to the access of evidence bearing on fault.[11] However, no such considerations apply to the idiosyncrasies of information which bear on the cause of an injury sustained by a seaman.

Finally, as a judgmental matter, we are not persuaded thta there are broad considerations of policy which require that we extend the admiralty rule of The Pennsylvania beyond the chosen area of ship collisions to embrace Jones Act cases.

The judgment for the defendant is reversed and a new trial ordered.

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[11] It is noteworthy that The Pennsylvania rule, even as applied in ship collision cases, has been abolished by those most affected by its operation. The legal presumption of fault in collision cases was expressly rejected in the thoroughly considered and carefully drafted Brussels Collision Liability Convention of 1910, to which most nations, including England from whose law our Supreme Court adopted it, now adhere. Article 6 of the Convention provides: "There shall be no legal presumption of fault in regard to liability for collision." *See* Comment, *The Difficult Quest for a Uniform Maritime Law,* 64 Yale L.J. 878, 888 and nn. 51, 52; *Law of Admiralty, supra,* at 401.

Appendix A

HAYS, *Circuit Judge* (concurring in the result):

I concur in the result and in Section I of the majority opinion.

APPENDIX B

Judgment of the United States Court of Appeals

Please refer to the agreed upon appendix annexed to the petition of Margaret Ann Wilkins filed on her behalf by Donald Sherwood, Esq. for the October Term 1971.